The aforesaid observations are sufficient to answer the question posed by me earlier. Furthermore the principle embodied in the maxim 'ubi jus ibi remendium' strengthens my finding, for the plaintiff here must surely have a means to vindicate and maintain her personal safety and a remedy, if she is injured in the exercise and enjoyment of it.

For the above reasons, I hold that s 9(2) of the Married Women Ordinance 1957 does not apply as the plaintiff's action is grounded on criminal offences committed or threatened to be committed against her.

Application dismissed.

Solicitors: *Sheikh Shatar Cheah & Tan; Kamar Ainiah & Co.*

Reported by *Prof Ahmad Ibrahim*

Taharuddin bin Ahmad v Leo Moi & Anor

HIGH COURT (KUANTAN) — CIVIL SUIT NO 73 OF 1984
LAMIN J
12 SEPTEMBER 1989

Road Traffic — Accident — Material contradictions between police report and testimony in court — Failure to prove case

The plaintiff met with an accident in which his motor cycle collided with the motor car driven by the first defendant. Different versions of the accident were given by the parties at trial. According to the plaintiff, when he arrived at the junction, a motor lorry overtook him and made a turn to the left without any indication. He applied his brakes so that the lorry could pass, and after proceeding for some twenty to thirty feet, he saw two cars in a single file coming from the opposite direction. The rear car driven by the first defendant overtook the front car and encroached into the path of the plaintiff resulting in the accident. The first defendant alleged that he was following a lorry before reaching the said junction. The lorry gave a hand signal indicating that he was going to turn right. The first defendant applied his brakes and while the lorry was in the course of turning, he saw the plaintiff's motor cycle flung towards his car and the collision occurred. He was not overtaking any car at that time.

Held, dismissing the plaintiff's claim:

There were material contradictions in the plaintiff's testimony in court and his police report. In the police report he stated that 'saya terbabas dan sebuah kereta' which he explained in court that he applied his brakes but the motor cycle continued moving. In Malay 'terbabas' connotes a change of direction as a result of loss of control. Further, the plaintiff stated in the police report that the lorry came from the opposite direction and not on his side of the road as he alleged in court, and also there was only one lorry. There is also an absence of dragging or scratch marks on the road. The accident occurred in the first defendant's lane and there was a single brake mark directly in front of the off-side tyre of the first defendant's car. The single brake mark must have been from the plaintiff's motor cycle. The first defendant's version was supported by the facts and evidence and the plaintiff had therefore failed to prove his case.

Harcharan Singh for the plaintiff.
DC Alfred for the defendant.

Cur Adv Vult

Lamin J: The plaintiff is claiming for damages as a result of a motor accident which occurred at about the sixth milestone Gambang/Kuantan road on 24 April 1981.

The undisputed facts were that on that day, the plaintiff while on his way home riding his motor cycle from the direction of Kuantan along the Kuantan/Gambang road and on reaching the sixth milestone at the junction of Kuantan/Pekan met with an accident in which his motor cycle collided with a motor car coming from the opposite direction driven by the first defendant. In court, the plaintiff (PW1) gave one version of the incident and the first defendant gave another. According to the plaintiff, when he arrived at the sixth milestone at the Kuantan/Pekan junction, a motor lorry overtook him and then made a turn to the left into the road leading to Pekan without giving any indication to turn left. The plaintiff applied his brakes so that the lorry could pass and then after proceeding for about twenty to thirty feet, he saw two cars in single file coming from the opposite direction, the rear car (driven by the first defendant) was in the process of overtaking the car in front. While overtaking the other car, it encroached into the path of the plaintiff and a collision occurred, dragging the plaintiff and his motor cycle to its (the motor car) side of the road. The plaintiff was thrown off his motor cycle.

On the other hand, according to the first defendant, before reaching the Kuantan/Pekan junction he was following a lorry and then the lorry slowed down and at the same time the driver of the lorry gave a hand signal indicating that he was going to turn to the right into the road leading to Pekan. The first defendant also applied his brakes and when the lorry was in the course of turning to the right, the first defendant saw the plaintiff's motor cycle flung towards the off-side of his car and a collision occurred. He was not overtaking any car at the time as alleged by the plaintiff.

Upon close scrutiny of the plaintiff's testimony, I found material contradictions between his evidence in court and his police report. In his police report which was made four days after the accident he stated that 'satu lorry dari Jalan Gambang masuk ke Jalan Pekan dan saya terbabas dan sebuah kereta Mercedez di depan saya terus langgar saya'. During cross-examination he was asked as to what he meant by 'terbabas'. His answer was that when he applied the brakes, his motor cycle still continued moving. However when it was directly put to him the meaning of 'terbabas' in that he skidded and lost control,

he did not agree. In Malay, 'terbabas' connotes a change of direction as a result of loss of control. A more reasonable version of the accident would be that somehow when the lorry came to be in front of the plaintiff, the lorry was on the plaintiff's lane, and the lorry driver must have then applied his brakes a little so as to slow down in order to turn into Jalan Pekan, and at that time the plaintiff, who must have been travelling at some speed suddenly found himself in a tight spot with the lorry close in front of him, applied his brakes and in the process of attempting to take evasive action, he skidded and lost control and went off to his right side and knocked into the off-side of the first defendant's car. This would be more consistent with the first defendant's version who said that before reaching the Kuantan/Pekan junction he had been following a lorry for a short while going towards Kuantan. Just before arriving at the said junction, the lorry in front of him slowed down and gave a hand signal indicating that he was going into Jalan Pekan. When the lorry was half way in the process of turning to the right, he saw a motor cycle flung towards his car. He said there was only one lorry then and it was coming from Jalan Gambang meaning the same lorry which he had been following. In his police report, the plaintiff stated 'satu lori dari Jalan Gambang masuk ke Jalan Pekan ...'. With the word 'dari' and that the plaintiff was then coming from Kuantan, the plaintiff must have meant that the lorry he was talking about must be the one which was coming from the opposite direction. This would further lend weight to the defendant's version. I am more than convinced that the plaintiff was not telling the truth when he said that a lorry overtook him and then it turned left into Jalan Pekan. Also the absence of dragging or scratch marks on the road surface from the right lane on the other side of the centre white line to the left lane as one faces Kuantan weighed very much against the testimony of the plaintiff in court. The plaintiff said that the oncoming car knocked into him and then dragged him and his motor cycle to the other side of the road, meaning the first defendant's side of the road. In my judgment, this could not have been possible. First, it must be remembered that the collision must have taken place at a point in the first defendant's lane because he said that the motor cycle knocked into his car when he had applied his brakes and he was already stationary. At that point of time, he was still along his lane, ie on the left side of the centre white line as one faces Kuantan. The sketch plan shows broken glass in front of the defendant's car with a short brake mark just about directly in front of the off-side tyre of the first defendant's car. The single brake mark must have been that of the motor cycle. All those suggest that the point of impact was when both the motor car and the motor cycle were on the left side of the centre white line as one faces Kuantan. Further, the plaintiff's story that after the collision he and his motor cycle were dragged to the first defendant's side of the road could not have been true because it must be noted that the damage was on the front off-side of the car, and if the car had crossed the centre white line and gone onto the other lane in the process of overtaking and travelled in the path of the motor cycle and at the same time the motor cycle had come straight heading for the off-side of the car, then upon impact, the car would have deflected to its right side and would in all probability have gone or landed on the edge of the road on the right side as one faces Kuantan. Therefore, the car could not have been found where it was almost parallel to the centre white line on its side of the road (F to I = 4 ft and G to I = 3 ft 6 ins — F being the front off-side tyre of car while G the rear off-side tyre of the car while I is the centre white line). The position of the car as in the sketch plan in fact was supportive of the defendant's version. The front off-side tyre was 4 feet from the centre white line while the rear off-side tyre was 3 feet 6 in. The position of the car therefore was somewhat at an angle to the centre white line, the front part having been deflected to its left by six (6) inches. So the motor cycle must have come diagonally from its side of the road onto the lane of the first defendant's car and hit the front off-side of the car and thus deflected the car to its left away from the centre white line. I found therefore that the plaintiff had failed to prove his case and accordingly I dismissed his claim with costs.

Claim dismissed.

Solicitors: *S Harcharan Singh Randhawa & Partners; Sangara & DC Alfred.*

Reported by *Yap Shao Sin*